

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2717 OF 2006

H.L. Maistry ..Petitioner

Vs.

State of Maharashtra and ors. ..Respondents

Mr. N.V. Bandiwadekar for the petitioner.
Mr. G.W. Matos, AGP for respondent Nos.1 to 3.
Mr. A.S. Desai for respondent nos.4 to 8.

CORAM: B.H. MARLAPALLE &
S.R. SAHTE, JJ.

Date : July 02, 2007.

P.C.:

1. Heard Mr. Bandiwadekar the learned counsel for the petitioner and Mr. Matos the learned AGP for respondent nos.1 to 3. Mr. Desai appears for respondent nos.4 to 8.

2. This petition filed under Article 226 of the Constitution prays for two different reliefs, namely, (a) to direct the respondent nos.1 to 3 to allot to the petitioner a residential tenement admeasuring 650 sq.ft. on payment of costs of Rs.2,58,000/- and (b) to direct the said respondents to cancel the

allotments of tenements made to respondent nos.6 and 7 and also the illegal acquisition of tenements by respondent nos.4,5 and 8 from the original allottees of said tenements to whom the allotment was made illegally. In the alternative to the first prayer, the petitioner has also sought directions against the respondent nos.1 to 3 to allot to him a suitable residential tenement on ownership basis in one of the housing Societies constructed on the land allotted by respondent no.2.

3. The petitioner was holding a post of Deputy Engineer under MHADA and he retired on reaching the age of superannuation on 30/9/1995. However, prior to his retirement, he had submitted an application on 20/4/1995 to the Chief Executive Officer of MHADA for allotment of tenement on ownership basis. He was informed by the Deputy Chief Executive Officer of MHADA by letter dated 4/8/1995 that the Board had taken a decision to allot 92 vacant tenements in various colonies under different schemes to the Senior Officers/ employees who were residing in the service quarters of the Authority and who were on the waiting

list of service quarters. He was called for interview by letter dated 29/3/1996 and the interview was scheduled on 3/4/1996. However, the Government of Maharashtra stayed the proposal of MHADA to allot these 92 quarters on 25/9/1996 and, therefore, the petitioner's case along with other remained in abeyance. After the Government reconsidered the proposal of MHADA, it was permitted to allot 27 out of 92 tenements to the Officers who were in service at that point of time. The petitioner was not in service when this decision was taken by the State Government. The Board therefore, did not consider the petitioner's case after the State Government vacated the stay.

4. It appears that the petitioner had approached the State Government directly to consider his case for allotment of a tenement from HADA Housing Scheme and as is clear from the letter dated 6/7/1999 addressed by the Housing and Special Assistance Department of the Government of Maharashtra to the Chief Officer of MHADA that the petitioner was allotted a tenement at Oshiwara - Jogeshwari by the Minister and he did not accept the same on the ground that the per sq.ft.

price of the tenement was excessive. His case was, therefore, reconsidered at the Government level and the Minister (Housing) had granted approval for allotment of tenement to the petitioner if available vacant out of the 92 vacant tenements under Code 066 in different colonies under different schemes in Mumbai. On receipt of this letter it appears that the petitioner approached MHADA and the Estate Manager of MHADA by his letter dated 30/9/1999 informed the petitioner that there was no vacant tenement available for allotment in Code No.066. He was further informed that tenement nos.36 and 40 in Building No.2, D.N. Nagar, Andheri (W) could not be allotted on ownership basis. The petitioner thereafter has been approaching the State Government.

5. As far as MHADA is concerned, the petitioner's case has been virtually closed by the communication dated 30/9/1999 and he has approached this court after seven years and challenged the allotment made in favour of some of the respondents or the transfers made in favour of some other respondents. MHADA has filed affidavit in reply and it has pointed out that

as per its policy, the allotments made in favour of the employees were in keeping with the policy decision and at the relevant time the petitioner was not in its employment and, therefore, there was no question of considering his case for such an allotment against 27 tenements. It has been further pointed out that the allottees are permitted to transfer the tenements as per Regulation No.25 of the Maharashtra Housing and Area Development (Estate Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981 or under Section 66 of the Maharashtra Housing and Area Development Act, 1976. Regulation 25 reads as under:-

"25. Prohibition against transfer of tenement-

(1) No allottee shall during the currency of tenancy under Regulation 20, transfer any tenement allotted to him except with the previous permission in writing of the Board and also of the housing society or the company, if such a society or company has already been formed and registered.

. It shall be open to the Board to refuse the permission or to grant the same subject to such conditions including a condition regarding the payment of a portion of the unearned increase in the value of the tenement not exceeding fifty per cent of such increase as the Authority may, in its absolute discretion but subject to the other provisions of this Regulation, thinks fit.

6. We are informed that the tenement occupied by respondent no.6 presently has been regularised. In any case it is for MHADA to consider the issue as has been pointed out by the petitioner and we are sure that MHADA being a statutory authority created by the State Government, it shall follow the regulations concerned and take appropriate decisions as expeditiously as possible and in any case within a period of three months from now so far as the petitioner's prayer for cancellation of the allotment is concerned.

7. In the premises there is no case made out to entertain this petition and the same is hereby rejected summarily.

(S.R. Sathe, J.)

(B.H. Marlapalle, J.)